

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

AGG 05 2011

STB Docket No. AB-1075X

Part of
Public Record

MANUFACTURERS RAILWAY COMPANY
-- DISCONTINUANCE EXEMPTION --
IN ST. LOUIS, MO

ALTERNATIVE MOTION OF
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION/INTERNATIONAL BROTHERHOOD OF TEAMSTERS
FOR LEAVE TO FILE INSTANTER REPLY TO PETITION FOR STAY PENDING
JUDICIAL REVIEW

The Brotherhood of Maintenance of Way Employees Division/International Brotherhood of Teamsters (BMWED) respectfully request that, if necessary, it be granted leave to file instanter its memorandum in opposition to the petition of Manufacturers Railway Company (MRS or Carrier) for a stay of the Board's decision in this docket that was served on July 12, 2011 which has been filed along with this motion.

MRS filed its petition for stay on July 27, 2011 and it served that petition on BMWED's counsel Donald F. Griffin by First Class Mail. Mr. Griffin was away from his office for work at the end of the week of the 25th and did not actually receive a copy of the petition until August 1, 2011.

Under Section 1152.25(e)(7)(iii) of the Board's regulations a reply to a petition to stay the effectiveness of an abandonment or discontinuance


authorization pending a request for judicial review is due 5 days after the petition is filed. BMWED submits that MRS has not actually filed a petition to stay the effectiveness of an abandonment or discontinuance authorization but rather seeks to stay the effect of conditions imposed on the discontinuance authorization so the 5 day reply rule is not actually applicable here. However, if the Board concludes that the 5 day rule does apply, BMWED submits that there is good cause for it to be granted leave to file its reply instantler.

As is set forth above, the petition for stay was served on BMWED's counsel, Mr. Griffin, by First Class Mail; and he received it on August 1, when he returned to the office. If the 5 day rule does apply, and if the weekend days are counted, that would mean that Mr. Griffin had one day to prepare a response to a 20 page petition. If the weekend days are not counted the reply was due on August 3. In fact Mr. Griffin had other commitments this week and asked Richard Edelman of O'Donnell, Schwartz & Anderson, PC to file BMWED's reply. However, Mr. Edelman was traveling to and in Boston on August 1 and 2 for previously scheduled expedited negotiations of a Federal Transit Act matter. Mr. Edelman also had to familiarize himself with the case. As a result, BMWED's reply is being filed on August 5, within 5 days of Mr. Griffin's actual receipt of the petition for stay. BMWED therefore submits that there is good cause for its reply to be deemed timely filed if the 5 day rule applies.

CONCLUSION

BMWED respectfully submits that the 5 day rule for filing a reply to a petition to stay the effectiveness of an abandonment or discontinuance authorization pending a request for judicial review is not applicable here because MRS only seeks a stay of a condition on the authorization. However, if the rule does apply, BMWED submits that there is good cause for it to be granted leave to file its reply instantler.

Respectfully submitted,

/s/ 

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August 5, 2011

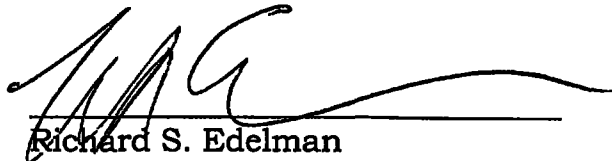
CERTIFICATE OF SERVICE

I certify that I have this day caused copies of the attached Alternative Motion for Leave to File Instant Reply to Petition for Stay Pending Appeal to be served on the following by First Class Mail and electronic delivery to:

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August 5, 2011